

**PCT**

NOTIFICATION OF TRANSMITTAL  
OF COPIES OF TRANSLATION  
OF THE INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY  
(CHAPTER I OR CHAPTER II  
OF THE PATENT COOPERATION TREATY)  
(PCT Rule 72.2)

From the INTERNATIONAL BUREAU

YOLAINESCHWEITZER  
PATENTANWALTSKANZLEI

To:

30. Nov. 2005

PATENTANWALTSKANZLEI ZPUNEK SW AZ  
Industriepark Kalle Albert  
Rheingastrasse 190-196  
65174 Wiesbaden  
ALLEMAGNE

Date of mailing (day/month/year)

24 November 2005 (24.11.2005)

Applicant's or agent's file reference

02/071K NUT

**IMPORTANT NOTIFICATION**

International application No.

PCT/EP2003/012567

International filing date (day/month/year)

11 November 2003 (11.11.2003)

Applicant

NUTRINOVA NUTRITION SPECIALTIES &amp; FOOD INGREDIENTS GMBH et al

**1. Transmittal of the translation to the applicant.**

The International Bureau transmits herewith a copy of the English translation made by the International Bureau of the international preliminary examination report established by the International Preliminary Examining Authority.

**2. Transmittal of the copy of the translation to the elected Offices.**

The International Bureau notifies the applicant that copies of that translation have been transmitted to the following elected Offices requiring such translation:

AZ, CA, CH, CN, GH, KG, KP, KR, MK, MZ, RU, TM

The following elected Offices, having waived the requirement for such a transmittal at this time, will receive copies of that translation from the International Bureau only upon their request:

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**3. Reminder regarding translation into (one of) the official language(s) of the elected Office(s).**

The applicant is reminded that, where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report.

It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned (Rule 74.1). See Volume II of the PCT Applicant's Guide for further details.

The International Bureau of WIPO  
34, chemin des Colombettes  
1211 Geneva 20, Switzerland

Authorized officer

Yolaine Cussac

Facsimile No.+41 22 740 14 35

Facsimile No.+41 22 338 70 80

Translation

PATENT COOPERATION TREATY

PCT/EP2003/012567



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

|  |   |   |
|--|---|---|
| Applicant's or agent's file reference<br>02/071K NUT   | <b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416) |   |
| International application No.<br>PCT/EP2003/012567   | International filing date (day/month/year)<br>11 November 2003 (11.11.2003)   | Priority date (day/month/year)<br>19 November 2002 (19.11.2002) |
| International Patent Classification (IPC) or national classification and IPC<br>A23G 3/00, A61K 7/16, 33/30, 35/78, 47/00, 47/20 |   |   |
| Applicant<br>NUTRINOVA NUTRITION SPECIALTIES & FOOD INGREDIENTS GMBH   |   |   |

|   |
|---|
| <p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>5</u> sheets, including this cover sheet.</p> <p><input type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of _____ sheets.</p>   |
| <p>3. This report contains indications relating to the following items:</p> <p>I <input checked="" type="checkbox"/> Basis of the report</p> <p>II <input type="checkbox"/> Priority</p> <p>III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p>IV <input type="checkbox"/> Lack of unity of invention</p> <p>V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p>VI <input type="checkbox"/> Certain documents cited</p> <p>VII <input type="checkbox"/> Certain defects in the international application</p> <p>VIII <input type="checkbox"/> Certain observations on the international application</p> |

|   |  |
|---|--|
| Date of submission of the demand<br>08 June 2004 (08.06.2004) | Date of completion of this report<br>25 August 2005 (25.08.2005) |
| Name and mailing address of the IPEA/EP                       | Authorized officer   |
| Facsimile No.   | Telephone No.  |

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP2003/012567

## I. Basis of the report

## 1. With regard to the elements of the international application:\*

- ☒ the international application as originally filed
- ☒ the description:  
pages \_\_\_\_\_ 1-18 \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☒ the claims:  
pages \_\_\_\_\_ 1-18 \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, as amended (together with any statement under Article 19  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☐ the drawings:  
pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☐ the sequence listing part of the description:  
pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

## 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

## 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/fig \_\_\_\_\_

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.  
PCT/EP 03/12567**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

## 1. Statement

|                               |        |                   |     |
|-------------------------------|--------|-------------------|-----|
| Novelty (N)                   | Claims | 2-7, 9-11, 13, 14 | YES |
|                               | Claims | 1, 8, 12, 15-18   | NO  |
| Inventive step (IS)           | Claims |                   | YES |
|                               | Claims | 1-18              | NO  |
| Industrial applicability (IA) | Claims | 1-18              | YES |
|                               | Claims |                   | NO  |

## 2. Citations and explanations

1. This report makes reference to the following documents:

D1: GB-A-1 239 309 (W.J. SMITH), 14 July 1971 (1971-07-14)

D2: US-A-4 814 163 (BARTH JORDAN), 21 March 1989 (1989-03-21)

D3: US-A-4 118 471 (PENSACK PHILIP), 3 October 1978 (1978-10-03)

D4: US-A-4 911 934 (YANG ROBERT K ET AL), 27 March 1990 (1990-03-27)

2. D1 discloses foodstuffs which contain an acidifier (betaine hydrochloride, hexamic acid or saccharinic acid, use for microbiological stabilisation). The two latter acidifiers can at the same time supply the necessary sweetness for confectionery articles (page 1, lines 10-65; page 2, lines 12-1). Claims 1, 8, 12, 15 and 16 of the present application therefore cannot be considered novel (PCT Article 33(2)).

D2 discloses cosmetics (pharmaceuticals) which contain an acidifier (saccharinic acid, use for microbiological stabilisation) (page 1, lines 10-65; page 2, lines 12-41). Claims 1, 8, 12, 17 and 18 of the present application

therefore cannot be considered novel (PCT Article 33(2)).

D3 discloses cosmetics (pharmaceuticals) which contain an acidifier (saccharinic acid, cyclamate acid, use for microbiological stabilisation) (claims; examples 1-3; column 2, line 47 - column 3, line 37; column 4, lines 33-42; column 5, lines 13-20). Claims 1, 8, 12, 17 and 18 of the present application therefore cannot be considered novel (PCT Article 33(2)).

D4 discloses cosmetics (pharmaceuticals), foodstuffs which contain an acidifier (saccharinic acid, acesulfamic acid, citric acid, ascorbic acid, sorbic acid, fumaric acid, malic acid, tartaric acid, lactic acid, use for microbiological stabilisation) (claims 1, 13, 16, 24-26; column 1, lines 20-43; column 2, line 49 - column 3, line 60; column 8, lines 5-22). Claims 1, 8, 12 and 16-18 of the present application therefore cannot be considered novel (PCT Article 33(2)).

3. Dependent claims 2-7, 9-11, 13 and 14 do not contain any features which, in combination with the features of any claim to which they refer, meet the PCT novelty or inventive step requirements, for the following reasons:

The features of dependent claims 2-7, 9-11, 13 and 14 have already been used for the same purpose; see documents D1 (claims 2, 4, 6, 7, 9-11, 13 and 14), D2 (claims 3, 5-7, 9-11, 13 and 14), D3 (claims 3, 5-7, 9-11, 13 and 14) D4 (claims 2, 3, 9-11, 13 and 14). It would therefore be obvious for a person skilled in the art to apply these features, with a corresponding effect. Consequently, the subject matter of claims 2-7, 9-11, 13 and 14 also fails to involve an inventive step (PCT Article 33(3)).